

**DRAFT**  
**Virginia Department of Education**  
***Guidelines for the Education Improvement Scholarships Tax Credits Program***  
**Effective July \_\_, 2013**

**Background.**

Legislation (Chapters 731 and 842) enacted by the 2012 General Assembly authorized the *Education Improvement Scholarships Tax Credits Program* and required the Virginia Department of Education (hereinafter the "Department") to develop guidelines implementing the provisions of Sections 58.1-439.25 through 58.1-439.28 (i.e., Article 13.3 of Title 58.1) of the *Code of Virginia*. The program provides state tax credits for persons or businesses making monetary or marketable securities donations to approved scholarship foundations that provide scholarships to eligible students for qualified educational expenses incurred in attending eligible nonpublic schools. Under the legislation, the guidelines are exempt from the provisions of the Virginia Administrative Process Act.

Acts of Assembly Chapters 713 and 716, enacted by the 2013 General Assembly, amended and reenacted §§58.1-439.25 through 58.1-439.28 of the *Code of Virginia*.

These guidelines are issued by the Virginia Department of Education (the "Department") to provide guidance to individuals and businesses regarding the *Education Improvement Scholarships Tax Credits Program*. These guidelines supersede the Guidelines for the Education Improvement Scholarships Tax Credits Program adopted by the Department on November 15, 2012. These guidelines will be published and posted on the Department's website at:  
[http://www.doe.virginia.gov/school\\_finance/scholarships\\_tax\\_credits/index.shtml](http://www.doe.virginia.gov/school_finance/scholarships_tax_credits/index.shtml).

**Definitions.**

*"Department" means the Virginia Department of Education.*

*"Donor" means a person or business entity eligible to make tax credit-approved donations to an eligible scholarship foundation.*

*"Eligible student with a disability" means a student (i) for whom an individualized educational program has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education; (ii) whose family's annual household income is not in excess of 400 percent of the current poverty guidelines; and (iii) who otherwise is a student as defined in this section.*

*"Enrolled" means a student included on the roll of a Virginia public school.*

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*"Marketable securities" means an equity or debt instrument (share/stock, bond, note) that is listed on an exchange and can be readily bought or sold.*

*"Monetary donation" means a donation to an eligible scholarship foundation by a donor in the form of cash, check, credit card, or other monetary gift, but not goods, services, marketable securities, or property.*

*"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of Section 673(2) of the Omnibus Budget Reconciliation Act of 1981.*

*"Program year" means the annual period from July 1 to June 30 during which the maximum amount of tax credits may be granted; the same calendar period as the state fiscal year.*

*"Qualified educational expenses" means school-related tuition and instructional fees and materials, including textbooks, workbooks, and supplies used solely for school-related work.*

*"Scholarship foundation" means a nonstock, nonprofit corporation that is (i) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended or renumbered; (ii) approved by the Department in accordance with the provisions of Section 58.1-439.27, Code of Virginia; and (iii) established to provide financial aid for the education of students residing in the Commonwealth.*

*"Student" means a child who is a resident of Virginia and (i) in the current school year has enrolled and attended a public school in the Commonwealth for at least one-half of the year, (ii) for the school year that immediately preceded his receipt of a scholarship foundation scholarship was enrolled and attended a public school in the Commonwealth for at least one-half of the year, (iii) is a prior recipient of a scholarship foundation scholarship, (iv) is eligible to enter kindergarten or first grade, or (v) for the school year that immediately preceded his receipt of a scholarship foundation scholarship was domiciled in a state other than the Commonwealth and did not attend a nonpublic school in the Commonwealth for more than one-half of the school year. A resident of Virginia means that the student meets the requirements of Section 22.1-3, Code of Virginia, for admission to a Virginia public school.*

### **Scholarship foundation eligibility.**

A scholarship foundation may be a nonstock, nonprofit corporation established in Virginia or in another state.

A nonstock, nonprofit entity may qualify as a scholarship foundation if:

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1. The nonstock, nonprofit entity is a corporation;
2. The entity complies with Section 57-48 et seq., *Code of Virginia*;
3. Applicable provisions of Article 13.3 of Title 58.1 (i.e., Sections 58.1-439.25 through 58.1-439.28) of the *Code of Virginia* are met; and,
4. The nonprofit entity's articles of incorporation or equivalent documents, or its governing rules, such as its bylaws, specifically state that one of its purposes is to provide financial aid for the education of students residing in the Commonwealth. An existing nonprofit, nonstock corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and that meets applicable provisions of Article 13.3 of Title 58.1, *Code of Virginia*, will be considered to meet this requirement if it was previously established for any other charitable purpose, but its articles of incorporation or equivalent documents, or its governing rules, such as its bylaws, have been legally and validly amended to also specifically state that another of its purposes is to provide financial aid for the education of students residing in the Commonwealth.

Any entity that has qualified as a scholarship foundation under the provisions of Article 13.3 of Section 58.1, *Code of Virginia*, and these guidelines and which later learns that the Internal Revenue Service (IRS) has decided to revoke its tax-exempt status (or has decided not to approve its application for tax-exempt status in the case of an entity seeking confirmation of its tax-exempt status) will immediately cease to be qualified to receive and administer tax credit-derived scholarship funds. Such entity must immediately notify the Department of this change in status and the Department will remove such entity from the approved list of eligible scholarship foundations. Scholarship foundations subject to removal from the list due to failure to meet this requirement will be notified by the Department of such action by U.S. Mail.

A nonprofit entity that qualifies as a scholarship foundation under Article 13.3 of Title 58.1, *Code of Virginia*, and these guidelines may perform other charitable purposes. For example, a neighborhood organization that receives an allocation of tax credits under the Neighborhood Assistance Act Tax Credit Program for Education may also be eligible to receive and administer tax credit-derived donations under Article 13.3 if it meets eligibility requirements contained in Article 13.3 and these guidelines.

No single donation may be used to qualify for state tax credits under more than one state tax credit program unless otherwise authorized by the *Code of Virginia*.

### **Scholarship foundation application process.**

The program year for the implementation of issued tax credits is July 1 through June

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30. An applicant may submit an application and the required documentation, via U.S. Mail, at any time during the year to become a qualified scholarship foundation and to be approved to receive and administer tax credit-approved donations. The Department will notify the applicant by U.S. Mail within 30 days of receipt of the application that such application is either complete or incomplete, and what additional information, if any, is required. Within 60 days after receipt of its complete application, the Department will notify an applicant by U.S. Mail that its application has either been approved or denied. Applications will be reviewed in the order received by the Department.

The following information must be submitted to the Department by applicants seeking to qualify as a scholarship foundation as defined in Section 58.1-439.25, *Code of Virginia*, to receive and administer tax credit-derived scholarship funds:

1. A general application form in a format determined by the Department and made available on the Department Web site.
2. A photo copy of the original Determination Letter or Group Ruling issued by the Internal Revenue Service (IRS) granting the applicant scholarship foundation federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.
3. A copy of the articles of incorporation or equivalent documents, or the governing rules, such as the bylaws, of the applicant scholarship foundation.
4. A copy of the organization's current letter from the Virginia Department of Agriculture and Consumer Affairs (VDACS) certifying that the organization complies with *Code of Virginia* § 57-48 et seq. .
5. An assurance statement signed by an officer of the applicant scholarship foundation assuring that, in issuing scholarships from tax credit-derived funds, that the applicant foundation will (i) provide scholarships for qualified educational expenses only to students whose family's annual household income is not in excess of 300 percent of the current poverty guidelines or to eligible students with a disability; (ii) not limit scholarships to students of one school; and (iii) comply with Title VI of the Civil Rights Act of 1964, as amended.
6. A copy of an audit or review for the foundation's most recent year ended performed by an independent certified public accountant, or, if the scholarship foundation's total revenues (including the value of all donations) were \$100,000 or less for the most recent year ended, a compilation for such year performed by an independent certified public accountant.

### **Notice of approval or denial process.**

The Department will notify an applicant by U.S. Mail within 30 days that its application is complete and of the beginning date of the 60-day approval period during which the

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Department must notify the applicant that the Department has either approved or denied its application. The Department will notify an applicant in writing via U.S. Mail of approval or denial of its application, including reasons for denial, within 60 days after receipt of its complete application.

### **List of qualified scholarship foundations.**

The Department will publish on its Web site a list of each scholarship foundation qualified under the program. The list will be updated on a continual basis as additional scholarship foundations are approved. Once a foundation has been qualified by the Department, it remains qualified until the foundation requests to be removed from the list or the scholarship foundation is removed from the list by the Department. If the scholarship foundation's VDACS registration expires any time after it has been approved, the scholarship foundation is not allowed to accept tax-credit eligible donations and the scholarship foundation's name will be removed from the approved list of scholarship foundations until proof of the renewed VDACS registration is received by the Department. The Department is required to remove a foundation from the annual list if it no longer meets the requirements outlined in the applicable provisions of Article 13.3 of Title 58.1, *Code of Virginia*, and these guidelines.

At its discretion, the Department may periodically require a qualified foundation to submit updated or additional information for the purpose of determining whether or not a foundation continues to meet the requirements outlined in the applicable Code provisions and these guidelines. The Department may exercise this discretion in cases including, but not limited to, where new factual information calls into question the continued qualification of a scholarship foundation based on the requirements of Article 13.3 of Title 58.1, *Code of Virginia*, and these guidelines.

The Department may remove a scholarship foundation from its annual list based on a finding of program abuse including, but not limited to, activities non-compliant with applicable Code provisions and these guidelines, fraudulent valuation or reporting of contributions, material deviations from the approved application, failure to maintain a current registration with the Department of Agriculture and Consumer Affairs or other actions that are inconsistent with the purpose of the program.

### **Annual list of scholarship foundations provided to General Assembly.**

The Department is required to submit a list of all scholarship foundations receiving donations for which tax credits were issued to the Chairmen of the House and Senate Finance Committees by December 1 each year. The list will be based on donations received during the 12-month period ending on the immediately preceding June 30.

### **Tax credits for donations; minimum donation; maximum tax credits.**

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The program year for the implementation of issued tax credits is July 1 through June 30.

Tax credit percentage, minimum donations, and maximum tax credits per year are as provided in Section 58.1-439.26 of the *Code of Virginia*. Only monetary or marketable securities donations are eligible for tax credits under the program.

For the taxable year beginning on or after January 1, 2013 (but before the taxable year beginning on January 1, 2028), donors are eligible to earn a credit against any tax due under Article 2 (Section 58.1-320 et seq.) or Article 10 (Section 58.1-400 et seq.), Chapter 12 (Section 58.1-1200 et seq.), Chapter 25 (Section 58.1-2500 et seq.), or Article 2 (Section 58.1-2620 et seq.) of Chapter 26, *Code of Virginia*, in an amount equal to 65 percent of the monetary or marketable securities donation made by the donor to a scholarship foundation included on the approved list of foundations published by the Department. Any credit claimed must be claimed for the taxable year following the taxable year of the donation.

The minimum monetary or marketable securities donation eligible for a tax credit is \$500 in a taxable year. For an individual, the first \$125,000 in donations made during the taxable year is eligible for tax credits. Such limitation on the amount of tax credits issued to individuals does not apply to credits issued to any business entity, including a sole proprietorship.

After a donor meets or exceeds the required \$500 minimum donation amount to a scholarship foundation, the donor can receive additional tax credits for donations to the same scholarship foundation that are each less than \$500, provided that the donations are all made within the same taxable year.

Tax credits are issued by the Department to donors making monetary or marketable securities donations to eligible scholarship foundations on a first-come, first-served basis under the following conditions:

1. Only monetary or marketable securities donations made to scholarship foundations on the approved list published by the Department on the date the donation was made are eligible for tax credits;
2. The total amount of tax credits that may be granted each program year (i.e., state fiscal year) may not exceed \$25 million;
3. The amount of the credit may not exceed the person's tax liability pursuant to Article 2 (Section 58.1-320 et seq.) or Article 10 (Section 58.1-400 et seq.), Chapter 12 (Section 58.1-1200 et seq.), Chapter 25 (Section 58.1-2500 et seq.), or Article 2 (Section 58.1-2620 et seq.) of Chapter 26, *Code of Virginia*, as applicable, for the taxable year in which the credit is claimed. Any credit not usable for the taxable year following the taxable year of the monetary or

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marketable securities donation may be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (Section 58.1-320 et seq.) or Article 10 (Section 58.1-400 et seq.), Chapter 12 (Section 58.1-1200 et seq.), Chapter 25 (Section 58.1-2500 et seq.), or Article 2 (Section 58.1-2620 et seq.) of Chapter 26, as applicable, in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner. If a donor is unable to use all of the credits in the six taxable years following the year that the donation was made, the donor is not permitted to transfer the unused credits to another person; and

4. Every person seeking the credit allowed under these guidelines must submit with the applicable tax return verification from each scholarship foundation to which donations have been made by the person during the taxable year and the tax credit certification document issued by the Department.

### **Preauthorization of tax credits; value and date of donation.**

On a form made available on the Department Web site, a donor seeking to make a monetary or marketable securities donation to one or more eligible scholarship foundations, or one or more scholarship foundations on behalf of such donor, must request preauthorization for a specified tax credit amount from the Superintendent of Public Instruction. The date and value of a donation used to calculate the tax credit amount requested is the same as the date and value of a donation used for federal income tax purposes, based on the laws and regulations of the United States related to federal income taxes.

The Department will preauthorize tax credits up to \$25 million for each program year (i.e., state fiscal year) on a first-come, first-served basis. First-come, first-served is determined based on a date and time stamp of the preauthorization request. For preauthorization forms submitted by scholarship foundations on behalf of donors via a secure Web-based system on the Department Web site, the date and time received will be documented electronically. For preauthorization forms submitted by individual donors via U.S. Mail, all requests received on the same day will be opened in random order and date and time stamped upon opening. When the \$25 million program year limit is reached, donors will be notified that they have been placed on a waiting list.

Preauthorization notices not acted upon by the donor within 180 days of issuance are void. If a donor makes one or more partial payments on a preauthorization notice, the remaining amount becomes void 180 days after issuance. The voided amount is then available for approval of other preauthorization requests in the order in which they were received.

At the beginning of each new program year, any preauthorized tax credits from the previous program year that have not been acted upon but are still valid will be carried over to the new program year and deducted from the \$25 million program year tax credit limitation. If the preauthorized tax credits are not acted upon by the donor by making a

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donation and providing the required signed preauthorization notice to the scholarship foundation before the expiration of the 180 days, the unused preauthorized tax credits will be added back to the total amount of tax credits that may be allocated in a program year.

At least monthly, the Department will update the following information on its Web site: the current amount of tax credits issued for the current program year, the amount of outstanding approved tax credit preauthorizations, and the remaining available tax credits for the program year.

### **Certification by scholarship foundation; required supporting documentation for donations.**

The preauthorization notice issued to the donor by the Department must accompany the monetary or marketable securities donation from the donor to the scholarship foundation, along with documentation that supports the date, amount, and type of donation. The scholarship foundation must, within 20 days from the date of the donation, submit to the Department the completed preauthorization notice certifying the donor, the value and type of the donation, and the date it was received from the donor, and must also provide the required documentation from the donor to the Department via a secure Web-based system contained on the Department Web site.

For monetary donations, supporting documentation provided by the donor must include a copy of the check(s), charge card transaction(s), or payroll deduction record(s). For donations of marketable securities, supporting documentation must include either a letter from the brokerage firm or a copy of a transaction report from the donor's stock portfolio that shows the name of the foundation that received the donation, number of units, and the high and low or mean price per share on the trade date for stocks, or the net asset value per unit at the close of the trade date for mutual funds.

For donations of marketable securities, the scholarship foundation must sell such securities and convert them into cash no more than 14 days after receipt of the donation. The scholarship foundation must submit additional supporting documentation that demonstrates it has sold such securities within 14 days from the date of the donation.

An individual or business donor making multiple donations each less than the required minimum donation amount but that in the aggregate meet or exceed the required minimum donation amount must report the cumulative donations using the same preauthorization notice form issued to the donor by the Department.

### **Issuance of tax credits.**



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Upon receipt and approval by the Department of the preauthorization form with required supporting documentation and certification of the donation by the scholarship foundation, the Superintendent of Public Instruction will issue a tax credit certificate within 30 days to the donor eligible for the tax credit.

When claiming the tax credit for the appropriate taxable year, an individual or business must attach to the applicable tax return this tax credit certification document, along with verification from each scholarship foundation to which donations have been made. The credit will be allowed to be claimed for the taxable year following the taxable year of the monetary or marketable securities donation.

The Department may request the assistance of the Department of Taxation for purposes of determining whether or not donations for which tax credits are requested by a donor qualify for state tax credits.

### **Required disbursement of tax credit-derived donations for scholarships.**

An approved scholarship foundation must disburse tax credit-derived donations for scholarships as required in Section 58.1-439.28 A. Disbursement means the date that the donated scholarship funds are paid by an approved scholarship foundation to an eligible school. Effective for program years ending on or after June 30, 2013, a scholarship foundation must disburse an amount at least equal to 90 percent of the value of the donations it receives (for which tax credits were issued) during the program year ending on June 30 by the immediately following June 30 for qualified education expenses through scholarships to eligible students. Tax credit-derived funds not used for such scholarships may only be used for the administrative expenses of the program.

Pursuant to Section 58.1-439.28 A, a scholarship foundation that fails to disburse at least 90 percent of any donated amount within the appropriate one-year period will be subject the following penalties:

1. For the first offense, the scholarship foundation will be required to pay a civil penalty equal to 200 percent of the difference between 90 percent of the donated amount and the amount that was actually disbursed. The scholarship foundation must remit the civil penalty to the Department within 30 days after the end of the one-year period.
2. For a second offense within a five year period, the scholarship foundation will be removed from the list of approved scholarship foundations, prohibited from requesting a preauthorized amount of tax credits on behalf of the donor, and prohibited from receiving and administering additional tax credit-derived funds for two years. After two years, the scholarship foundation may reapply to the Department to become an approved scholarship foundation and receive and administer tax credit-derived funds. If a scholarship foundation is authorized by the Department to be added to the list of approved scholarship foundations, the

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applicant scholarship foundation will not be considered to have any previous offenses.

A scholarship foundation that fails to disburse at least 90 percent of any donated amount within the appropriate one-year period will not be subject to the actions in Section 58.1-439.28 A when such failure is due to an eligible student forfeiting a previously issued scholarship supported by such donation.

### **Annual foundation report to the Department.**

By September 30 of each year, beginning September 2014, on a reporting template provided by the Department, all scholarship foundations must provide the following information to the Department and certify its completeness and accuracy: (i) the total number and value of contributions received by the foundation in its most recent fiscal year ended for which tax credits were issued by the Superintendent of Public Instruction; (ii) the dates when such contributions were received; and (iii) the total number and dollar amount of qualified educational expenses scholarships disbursed by the scholarship foundation during its most recent fiscal year ended. If the fiscal year is other than July 1 through June 30, information to support compliance with the disbursement requirements in Section 58.1-439.28 A must also be provided in order to provide complete data for the period of July 1 through June 30.

The annual report must include the following information:

1. Name of the scholarship foundation, contact person and contact information.
2. The scholarship foundation's most recent fiscal year period.
3. The total number and amount of contributions received by the foundation during its most recent fiscal year (and for the period of July 1 through June 30, if applicable).
4. The value of each contribution received by the foundation during its most recent fiscal year (and for the period of July 1 through June 30, if applicable).
5. The total number of qualified educational expenses scholarships disbursed during its most recent fiscal year (and for the period of July 1 through June 30, if applicable).
6. The total dollar amount of qualified educational expenses scholarships disbursed during its most recent fiscal year (and for the period of July 1 through June 30, if applicable).

The scholarship foundation may use the report template provided on the Department website or it may use another reporting format. However, if the scholarship foundation

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uses an alternative format it must contain the above required information. The Department prefers that all information be provided in the form of an Excel spreadsheet.

Pursuant to Section 58.1-439.28 B, any scholarship foundation that fails to provide this certified report to the Department by September 30 each year, beginning September 30, 2014, will be subject to the following penalties:

1. For the first offense, the scholarship foundation will be required to pay a \$1,000 civil penalty. The civil penalty must be remitted to the Department by November 1 of the same year.
2. For a second offense within a five-year period, the scholarship foundation will be removed by the Department from its list of approved scholarship foundations and will not be permitted to request preauthorization for additional tax credits, nor will it be permitted to receive and administer additional tax credit-derived funds. After two years, the scholarship foundation may reapply to the Department to become an approved scholarship foundation and receive and administer tax credit-derived funds. If a scholarship foundation is authorized by the Department to be added to the list of approved scholarship foundations, the applicant scholarship foundation will not be considered to have any previous offenses.

Scholarship foundations subject to these actions due to failure to meet the September 30th reporting deadline will be notified by the Department of such actions by U.S. Mail.

### **Requirements for awarding scholarships.**

In awarding scholarships from tax credit-derived funds, scholarship foundations must (i) provide scholarships for qualified educational expenses only to students whose family's annual household income is not in excess of 300 percent of the current poverty guidelines or to eligible students with a disability; (ii) not limit scholarships to students of one school; and (iii) comply with Title VI of the Civil Rights Act of 1964, as amended. Applicant scholarship foundations must provide an assurance in the initial application to the Department that they will comply with items (i) through (iii) of this paragraph.

Documentation must be maintained by the scholarship foundation that demonstrates it does not limit scholarships to students of one school. This may be in the form of a written policy of the scholarship foundation, an indication of such policy on its public Web site, or published on its public Web site, a list of eligible schools that students it has awarded scholarships currently attend.

Notwithstanding the requirement in Section 58.1-439.28 C not to limit scholarships to students of one school, donors may designate or limit their donations, and scholarship foundations may designate or limit their scholarship awards, to a particular group of eligible schools where scholarships may be used by eligible students, as long as the eligible student's parent or legal guardian selects the eligible school where the

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scholarship will be used among those in the designated or limited group. In order to safeguard the 501(c)(3) status of approved scholarship foundations, with such status required under Section 58.1-439.25 A to qualify as a scholarship foundation, a donor is not permitted to designate a specific eligible student to be the recipient of a scholarship that is derived from the donor's monetary or marketable securities donation.

A scholarship foundation must confirm and maintain written documentation that students to whom it awards scholarships meet the criteria contained in Section 58.1-439.25 and these guidelines of an 'eligible student with a disability', or a student whose family annual household income does not exceed 300 percent of the current poverty guidelines. Annual household income is as defined in the federal poverty guidelines.

Payment of scholarships from tax credit-derived funds by eligible scholarship foundations must be by individual warrant or check made payable to and mailed to the eligible school that the student's parent or legal guardian indicates, notwithstanding the allowance for donors and scholarship foundations to designate or limit the use of scholarships at a particular group of eligible schools. In mailing such scholarship payments, the eligible scholarship foundation must include a written notice to the eligible school that the source of the scholarship was donations made by persons receiving tax credits for the same.

Pursuant to Section 58.1-439.28 F, scholarship foundations must develop procedures for disbursing scholarships in quarterly or semester payments throughout the school year to ensure scholarships are portable for the students awarded the scholarships. Portability means that an eligible student, once awarded a scholarship amount, may use all or a portion of it at any eligible school in the Commonwealth. However, when a donor or scholarship foundation limits or designates a donation or scholarship award to be used among a particular group of eligible schools, portability may be restricted to such particular group of eligible schools.

### **Requirements for schools selected by scholarship students.**

Scholarship foundations must ensure that schools selected by students to which tax credit-derived funds may be paid (i) are in compliance with the Commonwealth's and locality's health and safety laws and codes; (ii) hold a valid occupancy permit as required by the locality; (iii) comply with Title VI of the Civil Rights Act of 1964, as amended; and (iv) are nonpublic schools that comply with nonpublic school accreditation requirements as set forth in Section 22.1-19, *Code of Virginia*, and administered by the Virginia Council for Private Education or nonpublic schools that maintain an assessment system that annually measures scholarship students' progress in reading and math using a national norm-referenced achievement test including, but not limited to, the Stanford Achievement Test, California Achievement Test, and Iowa Test of Basic Skills. Any other achievements tests used for this purpose must have been developed using a norm group that is representative of the United States.

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Scholarship foundations may ensure that eligible schools meet items (i) through (iv) in the preceding paragraph by obtaining an assurance statement signed by the Head of School in which the Head of School attests that the eligible school meets these requirements. This assurance statement must be kept on file by the scholarship foundation.

### **Student achievement reporting requirements for eligible schools.**

Eligible schools must meet the annual reporting requirements for national norm-referenced achievement tests in Section 58.1-439.28 D. However, eligible schools that comply with nonpublic school accreditation requirements as set forth in Section 22.1-19, *Code of Virginia*, and administered by the Virginia Council for Private Education are not subject to these reporting requirements when such eligible school does not administer national norm-referenced achievement tests at the grade level in which students receiving tax credit-derived scholarships are enrolled for that school year.

The annual student achievement report is to be provided to the Department by September 1 of each year, beginning with the first year of testing of the student. The report must include the following information:

1. Grade level, gender, race, family income level and the number of years of each student participating in the scholarship program;
2. The number of years each student has been tested;
3. Achievement test results and associated learning gains, including the national percentile ranking for the student's test scores; and
4. Graduation rates (if applicable) of its students participating in the scholarship program in a manner consistent with nationally recognized standards.

Reporting of student race for purposes of this reporting requirement is based on the standard federal Office of Management and Budget racial/ethnic categories. Reporting of family income level for students for purposes of this reporting requirement is based on the following ranges using the current federal poverty guidelines:

- up to and including 300 percent for students without a disability; and
- up to and including 400 percent for students with a disability.

The national standard used for reporting required annual graduation rate data to the Department is the Federal Graduation Indicator (FGI). Eligible schools with graduating students must submit the student numerator and denominator totals needed for the FGI graduation rate calculation in a format and using instructions provided by the Department. Only aggregated data totals are submitted for all scholarship students in the school; submission of individual student data or student demographic data related to

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graduation rate is not required. Eligible schools that do not graduate students are not subject to the graduation rate reporting requirement. Graduation rate data is not required in Section 58.1-439.28 D, *Code of Virginia*, to be posted to the Department Web site.

Eligible schools subject to the reporting requirements of the preceding paragraphs are required annually to submit the student-level test data and school-level graduation rate data to the Department, via U.S. Mail, using a reporting template provided by the Department that includes the required student classifications.

In publishing achievement test results on the Department Web site pursuant to Section 58.1-439.28 D, 'aggregate form' means reporting the test data by the student classifications across all students for which testing data is submitted; it does not mean reporting by individual eligible school or by individual eligible student. The test score type to be reported by schools is national percentile ranks.

### **Annual student scholarship limit.**

The aggregate amount of scholarships provided to each student for any single school year by all eligible scholarship foundations from eligible donations may not exceed the lesser of (i) the actual qualified educational expenses of the student or (ii) 100 percent of the per pupil amount distributed to the school division (in which the student resides) as the state's share of the Standards of Quality costs using the composite index of ability to pay as defined in the state appropriation act.

The Department will publish on its Web site the state Standards of Quality per pupil funding amount for each school division that relates to the upcoming school year. Initial per pupil amounts that relate to the upcoming school year based on the General Assembly-adopted budget will be posted as soon as possible following the passage of the applicable state budget by the General Assembly at its scheduled legislative session. Final per pupil amounts that relate to the upcoming school year will be posted to the Department Web site as soon as possible following the signing of the final state budget into law by the Governor.

Each eligible school is responsible for keeping track of the amount of tax credit-derived scholarship funds received for each eligible student for each school year. In the event that excess scholarship funds beyond the maximum permitted in Section 58.1-439.28 E are received for an eligible student, the school is responsible for returning the excess funds to the appropriate scholarship foundation within 30 calendar days. In addition, eligible schools should expend all of the tax credit-derived scholarship funds they receive for that school year on qualified educational expenses of eligible students attending the school that school year.

### **Annual summary report.**

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A summary report of the audit, review, or compilation must be made available to the Department by September 30 of each year and to the public upon request. As an appendix to the report, the scholarship foundation's board of directors must certify that (a) the total number and value of donations per locality received during the foundation's most recent year ended; (b) the total number and dollar amount of qualified educational expenses scholarships disbursed during the foundation's most recent year ended to every (1) student whose family's annual household income was not in excess of 300 percent of the current poverty guidelines or (2) eligible student with a disability; and (c) the percentage of first-time recipients to whom qualified educational expenses scholarships were disbursed during the foundation's most recent year ended.

### **Actions exempt from Administrative Process Act; decisions not subject to review or appeal.**

Actions of the Superintendent of Public Instruction or the Department relating to the issuing of tax credits and the qualification of scholarship foundations are exempt from the provisions of the Administrative Process Act (Section 2.2-4000 et seq.). Decisions of the Superintendent of Public Instruction or the Department are final and not subject to review or appeal.